No. 90-1435

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In The

Supreme Court of the United States

October Term, 1991

COOK COUNTY OFFICERS ELECTORAL BOARD, *et al.*,

Petitioners,

vs.

DOROTHY REED, *et al.*,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF FOR THE PETITIONERS

JACK O'MALLEY
State's Attorney of Cook County, Illinois

BURTON STEPHEN ODELSON*
Special Assistant State's Attorney
of Cook County, Illinois
3318 West 95th Street
Evergreen Park, Illinois 60642
708/424-5678
**Counsel of Record for Petitioners Cook County Officers Electoral Board, et al.*

Of Counsel:
MATHIAS WILLIAM DELORT
ODELSON & STERK, LTD.
3318 West 95th Street
Evergreen Park, Illinois 60642
708/424-5678

July 5, 1991

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QUESTIONS PRESENTED

1. Does a restriction on the expansion of city political parties to countywide parties by prohibiting use of the same party name unconstitutionally burden the right to ballot access in violation of the First and Fourteenth Amendments to the United States Constitution?

2. Does a requirement that a new party running only in a county obtain a total of 50,000 signatures when statewide candidates need only obtain 25,000 signatures unconstitutionally burden the right to ballot access as guaranteed by the First and Fourteenth Amendments to the United States Constitution?

3. Does a requirement that new party candidates for countywide offices are barred unless the party candidates running in a district of that county also have sufficient petition signatures unconstitutionally burden the right to ballot access in violation of the First and Fourteenth Amendments to the United States Constitution?

LIST OF PARTIES AND RULE 29.1 LIST

The parties to the proceedings below include the petitioners, the Cook County Officers Electoral Board and its members, David D. Orr[1], County Clerk of Cook County, Illinois, Aurelia Pucinski, Clerk of the Circuit Court of Cook County and Jack O'Malley, State's Attorney of Cook County.[2]

The respondents include the objectors to the Harold Washington Party candidates: Dorothy Reed, Valerie Sutton, Patton L. Feichter, Erwin Ricks and David Barrera.[3]

Certain other respondents herein are the candidates of the Harold Washington Party. These respondents are petitioners in No. 90-1126: Barbara J. Norman, Janice H. Robinson, Donald Pamon, Heldia Richardson, Tommy Brewer, Charles W. Alexander, Dorothy C. Hogan, Will Lawrence, Kenneth G. Hopkins, R. Eugene Pincham, Robert E. Pincham, Jr., Robert E. Brooks, Percy V. Coleman, Vivian D. Stewart-Tyler, James A. Deans, Dino F. McNeal, Mary King Criss, David T. Persons, Mello Sam

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[1] Mr. Orr succeeded Stanley T. Kusper, Jr. as County Clerk on December 3, 1990. He is named as a petitioner herein pursuant to Rule 35.3.

[2] Mr. O'Malley replaces Ernesto D. Borges, Jr., who had participated in the proceedings below as the third member of the Board. He is named as a petitioner herein pursuant to Rule 35.3.

[3] This case has been consolidated with No. 90-1126, *Norman, et al. v. Reed, et al.* Dorothy Reed and the other objectors are also respondents in that case.

LIST OF PARTIES AND RULE 29.1 LIST-Continued

H. Clora, Judy Marie Hawthorne, Chester LeSure, Celia Duncan, Don C. Passmore, Jr. and Bobbie J. Smith.

The remaining respondents in both cases are the Chicago Board of Election Commissioners and its members, Michael Hamblet, Arnette Hubbard and Raymond Jagielski.

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On Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The order of the Supreme Court of Illinois has not yet been reported and is reprinted in the appendix to the petition for writ of certiorari at 2a. The supreme court has not issued, and is not expected to issue, the opinion "to be issued at a later date" referred to in the order.[4] The memorandum opinion of the Circuit Court of Cook County, Illinois (Wachowski, J.) has not been reported. It is reprinted in the appendix to the petition for writ of

[4] In fact, of the four justices in the Illinois Supreme Court majority, two (Stamos and Ward) have retired and one (Calvo) has died. One justice from the minority (Ryan) has retired. In all, four of the seven justices who participated in the decision are no longer on the court.

certiorari at 16a. The decision of the Cook County Officers Electoral Board has not been reported. It is reprinted in the appendix to the petition for writ of certiorari at 29a.

JURISDICTION

The order of the Supreme Court of Illinois was issued on October 12, 1990. Pet. Cert. 2a. On October 18, 1990, the supreme court denied a motion to recall its mandate. Pet. Cert. 1a. No petition for rehearing was filed. The petition for writ of certiorari was filed on March 11, 1991 pursuant to an extension of time granted by Justice Stevens, and granted on May 20, 1991.

The petitioners invoke jurisdiction pursuant to 28 U.S.C. § 1257 (a). The Illinois Supreme Court's order construed the provisions of Ill.Ann.Stat. ch. 46, ¶¶ 10-2 and 10-5 (Smith-Hurd 1991) in a manner contrary to the First and Fourteenth Amendments to the United States Constitution as interpreted by this court.

CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment to the United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievance.

Fourteenth Amendment to the United States Constitution:

No state shall * * * deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

Ill.Ann.Stat. ch. 46, ¶ 10-1 (Smith-Hurd 1991) (Illinois Election Code)

(Article 10. Making of Nominations in Certain Other Cases) § 10-1. Political parties as hereinafter defined and individual voters to the number and in the manner hereafter specified may nominate candidates for public offices whose names shall be placed upon the ballot to be furnished, as hereinafter provided: However, no nomination may be made under the provisions of this Article 10 by any established political party which at the general election next preceding, polled more than 5% of the entire vote cast in the State, district or unit of local government for which nomination is made. * * *

Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1991) (Illinois Election Code)

* * * [A]ny such group of persons hereafter desiring to form a new political party within any county shall file such petition with the county clerk * * * . Any such petition for the formation of a new political party * * * shall at the time of filing contain a complete list of candidates of such party for all offices to be filled in

the * * * political subdivision * * * at the next ensuing election then to be held * * * .

* * *

In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall be circulated only within a district of the political subdivision and signed only by qualified electors who are residents of such district. Each sheet of the petition must contain a complete list of the names of the candidates of the party for all offices to be filled in the political subdivision at large, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district. Each component of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. The entire petition, including all components, must be signed by a total of qualified voters of the entire political subdivision equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such political subdivision at which an officer was elected to serve the political subdivision at large. * * *

The filing of such petition shall constitute the political group a new political party, for the purpose only of placing upon the ballot at such next ensuing election such

list or an adjusted list in accordance with Section 10-11, of party candidates for offices to be voted for * * * in such district or political subdivision less than the State * * * .

* * * If, at such ensuing election, * * * any other candidates of the new political party shall receive more than 5% of the votes cast for the office or offices for which they were candidates at such election * * * in any district or political subdivision, as the case may be, then and in that event, such new political party shall become an "established political party" within * * * such district or political subdivision less than the State, as the case may be, in which such candidate or candidates received more than 5% of the votes cast for the office or offices for which they were candidates. It shall thereafter nominate its candidates for public offices to be filled in * * * such district or political subdivision, as the case may be, under the provisions of the laws regulating the nomination of candidates of established political parties at primary elections and political party conventions, as now or hereafter in force.

Ill.Ann.Stat. ch. 46, ¶ 10-5 (Smith-Hurd 1991) (Illinois Election Code)

All petitions for nomination, shall, besides containing the names of candidates, specify as to each:

* * *

(2) The new political party, if any, represented, expressed in not more than 5 words. However, such party shall not bear the same name as, nor include the name of any established political party as defined in this Article.

This prohibition does not preclude any established political party from making nominations in those cases in which it is authorized to do so.

STATEMENT OF THE CASE

This case concerns the right of the candidates of the Harold Washington Party ("HWP") to be placed on the November, 1990 ballot for election to various offices within Cook County, Illinois, and in a larger sense, the ability of new political parties to gain ballot access.

A. Procedural History

The petitioner, the Cook County Officers Electoral Board ("Board"), is an administrative agency created by Illinois law to hear and pass upon objections to nomination papers filed by candidates for certain public offices. Ill.Ann.Stat. (1989) ch. 46, ¶ 10-9 (Smith-Hurd 1991). In the event its decision is appealed on administrative review to the courts, the Board joins the prevailing party and defends its rationale for the benefit of the reviewing court.

On August 6, 1990, the respondents Barbara J. Norman, *et al.*, ("HWP candidates") filed nomination papers requesting that their names appear on the ballot for various offices. J.A. 4, 5. The HWP fielded candidates for all non-judicial, countywide offices, county commissioners to be elected at large within the City of Chicago ("city commissioners"), and county commissioners to be elected

at large from outside the City of Chicago ("suburban commissioners")[5] . J.A. 4, 5.

The respondents, Dorothy Reed, *et al.*, ("objectors"), filed objections to the candidacies of all HWP candidates for the November, 1990 election, alleging that the nomination papers did not comply with various provisions of Article 10 of the Illinois Election Code. J.A. 6. Two of these objections remain relevant to this case: [1] that the name "Harold Washington Party" could not be used by the county candidates, because it was already the name of an "established political party" as defined in § 10-5(2) of the Election Code[6] and [2] that because 25,000 signatures were not submitted for suburban commissioner candidates, the HWP failed to file a "complete slate" for all possible "components" of Cook County, as required by § 10-2 of the Code. J.A. 6.

After considering various motions and concluding an extensive hearing, the Board ruled that all the HWP candidates would remain on the ballot, with the exception of the suburban commissioner candidates. Pet. Cert. 29a. The Board specifically sought to interpret the Election

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[5] Members of the Cook County Board are elected from these two districts pursuant to Ill.Const. transition schedule, § 5(b).

[6] The Illinois Election Code is contained entirely within chapter 46 of the Illinois Annotated Statutes (Smith-Hurd), and the paragraph numbers of the chapter correlate to the section numbers of the Election Code. All statutory citations herein are to the Illinois Election Code, Ill.Ann.Stat. ch. 46, ¶ ___ (Smith-Hurd 1991).

Code in a manner consistent with the constitutional principles previously enumerated by this Court and the United States Court of Appeals for the Seventh Circuit. Pet. Cert. 40a, 48a.

On administrative review, the Chicago Board of Election Commissioners and the Cook County Clerk[7] were joined as parties in order to easily subject them to the jurisdiction of the court for the purpose of enforcing orders relating to ballot printing. R.Vol. 1, C.313.

The Circuit Court of Cook County affirmed the Board's decision in part and reversed it in part. Pet. Cert. 16a. The Circuit Court's decision to remove all HWP candidates rested both on the candidates' failure to include judicial candidates on the slate, which the court found to be "county offices" necessary to complete the "slate" as required by § 10-2, and the party's failure to submit a sufficient quantity of suburban signatures for the suburban component of the slate. Pet. Cert. 26a.

Because of the great public interest in the case and the need to resolve the issues before the impending November election, the Illinois Supreme Court heard the matter on an expedited direct appeal pursuant to Ill.Sup.Ct.R. 302(b). J.A. 2.[8]

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[7] The Clerk was named at this juncture in his ministerial capacity as issuer of the ballots, rather than merely as a member of the Electoral Board.

[8] The HWP first appealed to the Appellate Court for the First Judicial District of Illinois. That court apparently recognized the erroneous analysis of the Circuit Court's decision, because it ordered that the HWP candidates be restored to the ballot pending disposition of the appeal. J.A. 116.

The supreme court issued a brief order affirming the removal of the HWP candidates on the grounds that the party could not use the HWP name countywide, and that the failure of the suburban commissioner candidates to obtain sufficient signatures doomed their running-mates. Pet. Cert. at 2a. The majority's order was joined by four justices. Three justices joined in two separate dissents. The supreme court indicated that a full opinion would follow, but none has yet been issued. *Id.*

Denied relief by the state court of last resort, the HWP candidates filed a Petition for Stay with Justice Stevens in his capacity as Circuit Justice on October 19, 1990. On October 22, 1990, Justice Stevens issued an order stating that the petition "raised a federal constitutional question of sufficient substance to merit the attention of the full Court". J.A. 117. In order that the status quo be maintained during the full Court's review of the case, Justice Stevens granted the petition and recalled the mandate of the Illinois Supreme Court pending further order of the Court. *Id.*

Because the practical effect of this order was to restore the HWP candidates to the ballot, the Electoral Board and election authorities presented additional written arguments to this Court addressing the logistical difficulties in reprinting ballots only days before the election.

On October 25, 1990, the full Court granted the Petition for Stay to the extent that the Board's decision was to remain in effect pending the timely filing and disposition of a petition for a writ of certiorari. J.A. 118.

The election was conducted on November 6, 1990, using ballots modified on an emergency basis to accommodate the HWP candidates. No HWP candidate was elected. However, HWP candidates did receive over 5% of the vote in several races. Section 10-2 of the Illinois Election Code grants such successful parties equal status with the Democratic and Republican parties as "established political parties" in that jurisdiction, entitling them to nominate by primary and take advantage of lower petition signature requirements. See Pet. Cert. 23.

The HWP candidates and the Board's petitions for writs of certiorari were granted on May 20, 1991.

B. The Federal Constitutional Questions

Before the Electoral Board, the HWP candidates moved to dismiss the objection regarding the deficiency in the suburban commissioner petitions, arguing that the objections were based on an "unconstitutional premise." J.A. 41. The HWP relied on *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979), *Williams v. Rhodes*, 393 U.S. 23 (1968) and *Moore v. Ogilvie*, 394 U.S. 814, *inter alia*, and urged that under the "well-established" principles of those cases, "it is simply impermissible to impose geographic/minimum signature requirements on new political parties attempting ballot status where the new political party, running countywide, has collected over twice as many signatures as necessary to run for statewide office." J.A. 44.

The Board's decision on this issue rested on the fact that the objectors' position could not be reconciled with

the candidates' and their supporters' rights as guaranteed by the United States Constitution. The Board stated:

> The statute is silent on the implementation of the objectors' suggested draconian penalty against a party which fell short in its attempt to field suburban-only candidates and Metropolitan Water Reclamation District candidates, but which demonstrated enough support to qualify on the county and city ballots nonetheless. Such an action would disqualify HWP from the city and county ballots for which it otherwise fulfilled all statutory requirements. The objectors have not directed the Board's attention to any state interest that would be furthered by such a penalty, thus adding credence to the Board's concern that disqualification of HWP merely for failure to meet the suburban and/or Metropolitan Water Reclamation District requirement would be constitutionally infirm.

Pet. Cert. 47a.

Likewise, the Board found that these constitutional principles directed a similar finding with respect to the "same name" objection. The Board stated:

> A strict reading of the statute would have the constitutionally suspect effect of stifling the creation of a new major political party which starts in a small jurisdiction and then attempts to grow across the state. Such a narrow reading would unduly burden the candidates' rights to freedom of association.

Pet. Cert. 40a.

In the Circuit Court, both the candidates and the Board contended that the statutory interpretation suggested by the objectors would infringe on the candidates'

and their supporters' constitutional rights. The candidates' petition for judicial review stated "it is unconstitutional to require the Harold Washington Party to gather more signatures to field county candidates than it would need to field a slate of candidates for statewide office. . . . " J.A. 114.

While the Circuit Court rested its decision on an interpretation of state law and expressly rejected the HWP candidates' constitutional arguments, those arguments went to the merit of the Circuit Court's eventual decision. The Circuit Court stated: "[The HWP candidates] suggest that § 10-2's component aspect is unconstitutional. * * * This case is disposed of on other grounds. The constitutionality of § 10-2 of the Election Code need not be addressed." Pet. Cert. 24a.

In the supreme court, the HWP candidates raised and the Electoral Board argued the same constitutional points.

The supreme court majority's order does not set forth the rationale or legal basis for the decision. However, the dissenting opinions manifest that federal constitutional issues were at the heart of the case, and that the removal of the HWP candidates infringed on constitutionally protected rights. In his dissent, Justice [now Chief Justice] Miller explained:

> The majority's result in the present case seemingly conflicts with the Supreme Court's decision in *Illinois State Board of Elections v. Socialist Workers Party* (1979) 440 U.S. 173, 99 S.Ct. 983, 59 L.Ed.2d 230, which invalidated, on constitutional grounds, an earlier provision in section 10-2 that effectively required a new party to present more signatures to run a candidate in the City of Chicago than statewide. The

Majority's construction of the statute produces a similar disparity.

Pet. Cert. 14a.

Similarly, Justice Ryan's dissent explicitly recognized that the majority's "narrow and strict construction" impinged on the fundamental rights of the candidates, and that the applicable statutes must be construed liberally. Justice Ryan used the *Socialist Workers* rationale to support his position that the majority's decision impermissibly restricted constitutionally-protected interests. Pet. Cert. 8-9a.

SUMMARY OF ARGUMENT

The Illinois Supreme Court's unprecedented and unexplained order is at odds with the well-established precedents of this Court governing ballot access for new political parties. If allowed to stand, the Illinois Supreme Court's decision will stymie the formation of new political parties in Illinois.

First, the supreme court's decision prohibiting use of the name "Harold Washington Party" is contrary to both the plain terms of the statute and common sense. Previous HWP candidates received sufficient electoral support in a recent Chicago mayoral election that the party became "established" within Chicago, entitling it to benefits enjoyed by the Democratic and Republican parties. Under the new Illinois Supreme Court ruling, new party names may not be used in a jurisdiction if they have been

used in any other town, village or hamlet in the State of Illinois. Under this analysis, new political parties cannot evolve from small areas to a countywide or statewide level.

Second, the Illinois Supreme Court's decision is contrary to this Court's decision in *Illinois State Board of Elections v. Socialist Workers Party* (1979), 440 U.S. 173, 99 S.Ct. 983, 59 L.Ed.2d 230, which struck down requirements that local candidates obtain more signatures than were required of statewide candidates. In its decision below, the supreme court enforced a "complete slate" requirement for new political parties by removing the entire slate because one portion of the slate had not met the statutory signature quotas. This standard unfairly penalizes entire political parties merely because a few of its individual candidates did not garner sufficiently wide support. It also gives suburban areas a "veto power" over candidates supported in urban areas.

ARGUMENT

I

THE ILLINOIS SUPREME COURT'S INTERPRETATION OF THE ELECTION CODE IS CONSTITUTIONALLY IMPERMISSIBLE BECAUSE IT IMPOSES CONDITIONS THAT SERVE NO COMPELLING STATE INTEREST.

This Court has long enunciated clear legal principles that prohibit the construction of unreasonable barriers to ballot access. Elections should be free and open, and

allow voters to choose from candidates and political parties that have demonstrated an appropriate level of support within the voting jurisdiction. Election laws should not be used to preserve the status quo by unfairly burdening political outsiders with unreasonable barriers to ballot placement. The Illinois Election Code, as interpreted by the Illinois Supreme Court, deprives the residents of Cook County of their constitutional rights under the First and Fourteenth Amendments by preventing new political parties from appearing on the ballot through the use of impermissible signature and party name requirements.

This Court's ballot access decisions are grounded in the protections afforded voters and candidates by the First and Fourteenth Amendments to the Constitution. Although the rights to freedom of association, speech and equal protection are more aptly ascribed to the individual electors, they are inextricably entwined with the rights of the candidates whom the voters desire to support. *Anderson v. Celebrezze*, 460 U.S. 780, 103 S.Ct. 1564, 1568, 75 L.Ed.2d 547 (1983).

Voters may only exercise their right to freedom of speech and association through a ballot which includes candidates who come near to reflecting the voter's "policy preferences on contemporary issues." *Lubin v. Panish*, 415 U.S. 709, 716, 94 S.Ct. 1315, 1320, 39 L.Ed.2d 702 (1974). The right to vote is "heavily burdened" if the voter's choices are confined to the major party players when new parties and others are "clamoring for a place on the ballot". *Id.*

In short, the exclusion of new party candidates burdens the voters' freedom of association rights because an election campaign is a platform for expression of viewpoints and because candidates serve as focal points for like-minded citizens. *Anderson*, 460 U.S. at 788, 103 S.Ct. at 1569.

In *Anderson*, this Court prescribed the method to be utilized in reviewing statutes regulating new party ballot access. The process is an analytical one, first considering the "character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments", and then identifying and evaluating the "precise interests put forward by the State as justification" for the rule. *Id.*, 460 U.S. at 789, 103 S.Ct. at 1570. Finally, the court must determine the legitimacy and strength of those state interests and consider the extent to which those interests make it necessary to burden the plaintiff's rights. *Id.* When state laws establish distinct burdens on new party ballot access, the State must demonstrate a compelling state interest for the challenged regulation. *Williams v. Rhodes*, 393 U.S. 23, 31, 89 S.Ct. 5, 11, 21 L.Ed.2d 24 (1968).

The decision below is plainly indefensible. First, the State's restriction on the use of a political party name prohibits the expansion of a new political party into new jurisdictions. Second, the "complete slate" requirement imposes signature quotas relating to numerosity and geography which bear no relation to any state interest. The Illinois Supreme Court decision and the record fail to identify **any** state interest allegedly furthered by the Illinois statutes, compelling or otherwise. Had it not been stayed, the decision would have completely thwarted the

candidates' right to ballot access and the voters' rights to speak, assemble and choose.

II

THE ILLINOIS ELECTION CODE IMPERMISSIBLY PROHIBITS NEW POLITICAL PARTIES FROM EXPANDING FROM A CITY TO A COUNTY.

Article 10 of the Illinois Election Code sets forth the requirements for new political parties to gain ballot access. Article 10's labyrinthine array of obstacles to new party ballot access has been slowly eroded by a series of cases considered by this Court and the United States Court of Appeals for the Seventh Circuit. Together, these cases have outlined the basic principles of liberal ballot access found at the heart of the claims considered in this case. *See Illinois State Board of Elections v. Socialist Workers Party,* 440 U.S. 173, 99 S.Ct. 983, 59 L.Ed.2d 230 (1979) (invalidating a requirement that city candidates obtain more signatures than statewide candidates); *Kusper v. Pontikes,* 414 U.S. 51, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973) (invalidating a primary lock-out rule); *Moore v. Ogilvie,* 394 U.S. 814, 89 S.Ct. 1493, 23 L.Ed.2d 1 (1969) (invalidating a requirement that 25,000 signatures for statewide candidates must include at least 200 from each of 50 counties); *Communist Party v. State Board of Elections,* 518 F.2d 517 (7th Cir. 1975), *cert. denied,* 423 U.S. 986, 96 S.Ct. 394, 46 L.Ed.2d 303 (1975) (invalidating a requirement that statewide candidates must obtain no more than 13,000 of their 25,000 signatures from a single county).

In *Socialist Workers,* this Court invalidated just one of Illinois' many restrictions on new party formation and

established that "[b]y limiting the choices available to voters, the State impairs the voters' ability to express their political preferences * * * [V]oting is of the most fundamental significance under our constitutional structure." 440 U.S. at 184, 99 S.Ct. at 990. This Court also reaffirmed that restrictions on new party formation are only permissible when they serve compelling state interests and are adopted through use of the least restrictive means to those ends. This Court recognized that new parties have played an important role in the political development of the nation, and that overbroad restrictions on those parties jeopardize this highly protected form of political expression. *Id.*

The county HWP candidates sought to organize under the banner of a political party which had already achieved substantial support in the City of Chicago[9], but which had not yet had the opportunity to run in Cook

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[9] The HWP first ran candidates in the April, 1989 special mayoral election. The results of the election were:

Richard M. Daley (D)	577,141	55.4%
Timothy C. Evans (HWP)	428,105	41.1%
Edward R. Vrdolyak (R)	33,998	3.5%

This level of support was, of course, sufficient to grant HWP equal status with the Democratic and Republican parties as to Chicago municipal elections. Mr. Evans testified before the Electoral Board that he authorized the county candidates to continue use of the party name. R. Vol. 8, Tr. 8/24/90 (11:00 am) at 4-17.

(Continued on following page)

County.[10] The supreme court majority removed the county HWP candidates because the use of the same name violated the statutory proscription against duplicating the names of "established" political parties.

Section 10-1 of the Election Code, however, clarifies that a local party is only "established" as to the community in which its candidates ran. Accordingly, the "same name" ban extends, by its terms, only to parties that are "established" in the same jurisdiction. Since the HWP was not established in Cook County, the use of the HWP name by the countywide candidates was entirely proper.

As an administrative agency, the Electoral Board had no authority to declare statutes unconstitutional. Even if the Board had that power, the Board need not have exercised it here, since the statutes in question could have been read in a constitutional and rational fashion. The Board's decision observed the fundamental canon of statutory construction that a statute must be construed in a broad fashion to save it from constitutional infirmities.

(Continued from previous page)

The HWP continues to enjoy a high degree of success in local Chicago elections. The results of the 1991 mayoral election were:

Richard M. Daley (D)	452,075	70.7%
R. Eugene Pincham (HWP)	160,504	25.1%
George Gottlieb (R)	23,477	3.7%
James Warren (SWP)	3,582	0.5%

[10] The first countywide election after Evans' mayoral bid was the November, 1990 election.

Morrison v. Olson, 487 U.S. 654, 682, 108 S.Ct. 2597, 101 L.Ed.2d 569, 600 (1988).

The Illinois Supreme Court's interpretation of this "same name" rule not only restricts the candidates' constitutional rights, but it is also completely unworkable. Under this construction, if a local party achieves support and becomes "established" in the City of Cairo, Illinois, the same party name may not be used by candidates seeking municipal office in Chicago, 400 miles away.[11] Similarly, candidates would be faced with the daunting task of investigating the status of their party name in each of Illinois' 1,000-plus incorporated municipalities. Such a requirement obstructs the ability of the new parties to form, let alone grow. Under the supreme court's rationale, anyone could successfully challenge a new party ticket simply by finding an established party somewhere in the state which bore or included the name of the challenged new party.

The Electoral Board interpreted this provision as merely prohibiting the use of party names which were "established" as to the subdivision in which the prospective candidates were running. Because the HWP was only established within the City of Chicago, the Board saw no bar to the use of the party name countywide. The dissenting supreme court justices endorsed this judgment and

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[11] In Illinois, candidates for municipal offices generally shun the labels of the nationally-established political parties by forming "local" parties such as the "Good Government Party". *See Arden v. Village of Oak Lawn*, 537 F. Supp. 181, 184, n. 8 (N.D. Ill. 1982). Candidates for legislative and county offices generally run as Democrats or Republicans.

found that the candidates' rights could be preserved while also protecting Illinois' rights to control ballot confusion. Likewise, they noted that the majority's interpretation of § 10-5 led inexorably to a result directly at odds with the settled decisions of this Court. Pet. Cert. 8a, 14a.

The right to form and foster a new political party does not begin and end with ballot access; it includes the right to capitalize on past success by fielding candidates and promoting a platform in new areas. In examining a similar issue, this Court noted: "[T]o grant the State power to keep all parties off the ballot until they have enough members to win would stifle the growth of all new parties working to increase their strength from year to year." *Williams v. Rhodes*, 393 U.S. 23, 32, 89 S.Ct. 5, 11, 21 L.Ed.2d 1 (1968). Here, the interpretation of the Illinois "party name" rule forces a new party to tackle a statewide campaign first in order to run future candidates in smaller jurisdictions. Therefore, because the "same name" ban prohibits the expansion of a political party to a new jurisdiction, it is far too onerous to protect any legitimate state interest.

In sum, by preventing the expansion of the party standard to new jurisdictions, the Illinois court has thwarted any reasonable means through which Illinois new parties can achieve continuing electoral access. See Pet. Cert. 13a (Justice Miller's dissenting opinion).

III

THE "COMPLETE SLATE" REQUIREMENT IMPOSES SIGNATURE QUOTAS BASED ON NUMEROSITY AND GEOGRAPHY WHICH BEAR NO RELATION TO ANY STATE INTEREST.

The Illinois Supreme Court held that all HWP candidates could not appear on the ballot because the HWP failed to file a "complete slate" of candidates as required by section 10-2 of the Election Code. Pet. Cert. 4a. This restriction is constitutionally impermissible for three reasons. First, it effectively requires a new political party in Cook County to obtain 50,000 signatures to appear on the ballot, when a new statewide party need only present 25,000 signatures. Second, the "complete slate" requirement effectively forces a new political party in Cook County to obtain 25,000 signatures from Chicago and 25,000 from suburban Cook County. Third, it imposes a "complete slate" requirement on new political parties without imposing a similar requirement on established parties.

A. SECTION 10-2 IMPOSES IMPERMISSIBLE BURDENS BECAUSE IT REQUIRES NEW COUNTYWIDE PARTIES TO OBTAIN MORE SIGNATURES THAN NEW STATEWIDE PARTIES.

The HWP sought to nominate candidates for all available countywide offices, Cook County Commissioners elected from Chicago, Cook County Commissioners elected from the suburbs, and Commissioners of the

Metropolitan Water Reclamation District[12]. It is undisputed that the petitions for suburban commissioners contained less than the requisite 25,000 signatures, and therefore, the suburban Commissioner candidates were ineligible for a position on the ballot.[13]

The Board, however, found that the infirmity in suburban signatures did not doom the entire party ticket because it believed that such a strict interpretation of the "slate requirement" would be unconstitutional. Pet. Cert. 45a. The Board took a broad interpretation of the statute, essentially holding that the law only required that the petition list the "complete slate" which the party **desired to run,** not a "complete slate" **for all offices up for election.** Such an analysis of the new party statute is not extraordinary. See *Stevenson v. State Board of Elections,* 794 F.2d 1176, 1179 (7th Cir. 1986) (Easterbrook, J., concurring). The Circuit Court and the Illinois Supreme Court

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[12] Although this component did not contain sufficient signatures to stand alone, the Board and Circuit Court found that the water district was not a "district" of Cook County as contemplated by § 10-2, and that this deficiency was not relevant to consideration of the remaining candidacies. Pet. Cert. 47a.

[13] The Board found that the HWP had filed approximately 44,000 signatures on the county/city petitions but only 7,400 on the county/suburban petitions. Pet. Cert. 46a. In the November, 1986 election for suburban commissioner, 635,285 ballots were cast. Thus, the 25,000 signature requirement for suburban commissioner is only 3.9% of the votes cast, a threshold permissible under this Court's standards as set forth in *Jenness v. Fortson,* 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed. 2d 554 (1971) (upholding signature requirement equalling 5% of registered voters). The 7,400 suburban signatures submitted by HWP represent only 1.2% of the votes cast.

rejected the Board's position and held that the ineligibility of the suburban HWP candidates resulted in the failure to file a "complete slate". For that reason, the lower courts barred all HWP candidates from the ballot.

Section 10-2, as interpreted by the Illinois Supreme Court, therefore, requires a new countywide political party to collect 50,000 signatures – 25,000 for suburban commissioners, coupled with 25,000 for city commissioners. This requirement of 50,000 signatures is at odds with the *Socialist Workers* holding.

In *Socialist Workers*, this Court held that the Illinois Election Code was unconstitutional in that it required new political parties to collect more signatures to run for public office in the City of Chicago than the 25,000 signatures that would be required to run for statewide office. 440 U.S. at 187. Justice Rehnquist observed the inequity of the requirement and succinctly stated that "[t]he disparity between state and city signature requirements does not make sense * * * . [T]he disparate treatment bears no relationship to any state interest." *Id.* at 190-91 (Rehnquist, J., concurring).[14] Justice Stevens stated the legal principle even more bluntly: "If [the interests of limiting ballot access to serious candidates] is adequately served

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[14] The incongruencies were created as the courts invalidated various portions of the Election Code and left remaining similar provisions to stand. See *Socialist Workers*, 440 U.S. at 191 (Rehnquist, J., concurring) ("The courts having knocked out key panels in an otherwise symmetrical mosaic, it is not surprising that little sense can be made of what is left.").

by a 25,000-signature requirement in a statewide election, the same interest cannot justify a larger requirement in a smaller election." *Id.* at 189. (Stevens, J., concurring). The HWP has been placed in the position of collecting more signatures to run as a countywide party than it would need as a statewide party.

B. SECTION 10-2 IMPOSES IMPERMISSIBLE BURDENS ON NEW POLITICAL PARTIES BECAUSE IT REQUIRES GEOGRAPHIC DISTRIBUTION OF PETITION SIGNERS.

The Board determined that the disqualification of the suburban commissioners did not require the disqualification of the entire HWP ticket. Nonetheless, the Illinois Supreme Court majority narrowly interpreted the Election Code to strike the HWP county and city candidates merely because their running-mates did not demonstrate the required suburban support.

This construction ignores this Court's mandate in *Moore v. Ogilvie* and *Illinois State Board of Elections v. Socialist Workers Party*, and imposes the will of the voters of a smaller jurisdiction over the will of those in the larger. In effect, the decision below gives suburban voters veto power over candidates running only in Chicago or countywide. Such geographic discrimination runs afoul of the principles established in *Moore v. Ogilvie*, 394 U.S. 814, 89 S.Ct. 1493, 23 L.Ed.2d 1 (1969). In *Moore*, this Court held that Illinois' requirement that new parties present a total of 25,000 signatures distributed in groups of at least 200 from each of 50 counties violated the candidates' rights to due process and equal protection.

While signature requirements serve the important purpose of ensuring that the candidates seeking ballot status have "achieved a modicum of support" in the community, see *American Party of Texas v. White*, 415 U.S. 767, 94 S.Ct. 1296, 39 L.Ed.2d 744 (1974), the numerical framework for this test must always comport with constitutional standards. Requiring separate suburban signatures for county candidates does nothing to further that interest. *See also Communist Party v. State Board of Elections*, 518 F.2d at 520.

C. THE "COMPLETE SLATE" REQUIREMENT IMPERMISSIBLY BURDENS NEW POLITICAL PARTIES BECAUSE NO SIMILAR REQUIREMENT IS IMPOSED ON ESTABLISHED PARTIES.

Under the Illinois Supreme Court's holding, Illinois candidates may generally not run alone under a new party label. Section 10-2 states that if more than one office is up for election in a jurisdiction, the party must file a "complete slate" of nominees for all offices serving that jurisdiction. Interestingly, established parties need not fill every available ballot position. For instance, in heavily Democratic areas such as Chicago, the Republican party's line on the ballot often simply states "NO CANDIDATE FILED".

Presumably, the slate requirement encourages party identification and cohesiveness. While this is a permissible goal, it hardly can be justified in the framework of a new party which has yet to form. Even if the "complete slate" requirement is justifiable in some context, there is clearly no rationale supporting the result reached by the court below. The means chosen by the supreme court majority are not the "least drastic means" of advancing

whatever state interest might be furthered by the complete slate requirement. Rather, they are quite draconian methods which exact the most severe penalty of removal of the candidates from the ballot, thus limiting voter choice.[15] *Richards v. Lavelle*, 620 F.2d 144 (7th Cir. 1980).

For example, a new "anti-tax" party may wish to nominate candidates only for offices that have an impact on taxes or tax policies. Under the Illinois court's rationale, such a party may be forced to field candidates for offices that have no relation to its platform. Such a requirement particularly infringes on a party's ability to limit its agenda only to certain issues, and thus to disassociate itself from views it might not otherwise desire to espouse. *Cf. Wooley v. Maynard*, 430 U.S. 705, 97 S.Ct. 1428, 51 L.Ed.2d 752 (1977).

CONCLUSION

The dissenting Illinois Supreme Court justices correctly noted that the majority's decision was "not compelled by a fair reading of the relevant statutes and unnecessarily hampers voters of this State in the exercise of their rights." Pet. Cert. 15a. The judgment of the Supreme Court of Illinois should be affirmed in part and

[15] The Board knows of no instance in decades where any person ran for countywide office in Cook County as an independent or as a candidate of a new political party.

reversed in part by fully reinstating the decision of the Cook County Officers Electoral Board.

Respectfully submitted,

JACK O'MALLEY
State's Attorney of Cook
County, Illinois

BURTON STEPHEN ODELSON
(Counsel of Record)
Special Assistant State's Attorney
of Cook County, Illinois
3318 West 95th Street
Evergreen Park, Illinois 60642
708/424-5678

Attorneys for Petitioners.

MATHIAS WILLIAM DELORT
ODELSON & STERK, LTD.
3318 West 95th Street
Evergreen Park, Illinois 60642
Of Counsel.

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